

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Paul S. Keim *et al.*
Application No. : 10/531,159
PCT No. : PCT/US03/32887
Int. Filing Date : 14 October 2003
Priority Date : 11 October 2002
Title : *MOLECULAR SIGNATURES AND ASSAY FOR
FLUOROQUINOLINE RESISTANCE IN BACILLUS
ANTHRACIS*
Attorney Docket No. : 112624.00029

PETITION UNDER 37 C.F.R. § 1.181

Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

Applicants hereby petition the Office of the Director under 37 C.F.R. 1.181 to invoke its supervisory authority. Applicants wish to correct the filing date accorded to U.S. patent application number 10/531,159 ('159 application), filed by Keim *et al.* Applicants submit that the correct filing date is April 11, 2005.

The present petition is Applicants' third attempt to address this matter. Applicants have filed two petitions under 37 C.F.R. 1.10(d) in attempts to correct the filing date accorded to the '159 application. Both prior petitions have been dismissed by the USPTO. Notwithstanding the prior denials, Applicants maintain that the USPTO has not properly considered all evidence, and seek to invoke the supervisory authority of the Office of the Director to reconsider the relevant facts in support of its position.

On April 11, 2005, Applicants filed by Express Mail a U.S. patent application as a nationalization of PCT patent application PCT/US2003/032887, filed October 14, 2003, which claimed priority of U.S. provisional application number 60/417,843, filed October 11, 2002. The U.S. provisional application is believed to have continuous pendency with the PCT application because October 11, 2003, fell on Saturday and the next regular business day for the USPTO was October 14, 2003. The Certificate of Mailing for the U.S. patent application bearing Express Mail No. EV667329735US and executed on April 11, 2005, and accompanying transmittal documents addressed to the United States Receiving Office, is provided in Exhibit A.

Applicants deposited the Express Mail package containing the U.S. patent application directly with employees of the U.S. Post Office on April 11, 2005, under Express Mail Label No. EV667329735US. The Express Mail package was pre-addressed to: Mail Stop: PCT RO/US, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450. Please see attached Exhibit B.

On April 26, 2005, Applicants received the return postcard with the assigned serial number for the U.S. patent application. On the return postcard, the accorded U.S. filing date was given as April 12, 2005. Please see Exhibit C.

Upon close inspection, Applicants discovered that the U.S. Post Office had written the date-in on the Express Mail receipt as April 12, 2005, see attached Exhibit B. Further investigation, including interviews with all persons involved in handling the Express Mail package, and discussions with the U.S. Post Office, revealed that the U.S. Post Office had made a mistake as to filling in the "date accepted" field of the Express Mail receipt. In fact, the Express Mail package was deposited directly with Post Office employees on April 11, 2005, and is entitled to receive the same date as its filing date.

In support of Applicants' petition, the following facts are offered as evidence of the events as they transpired. Express mail packages are taken once daily from the offices of Quarles & Brady (law firm representing assignee) by Intellequick courier service. Intellequick makes one pick-up of Express Mail packages from Quarles & Brady each business day and

transports them to the U.S. Post Office. The affidavits of Maritza O'Neill and William Bilyk confirm that Express Mail EV667329735US containing the subject national stage patent application was placed in the Intellequick courier pick-up bin by about 4:30 p.m. on April 11, 2005, see Exhibit D. These affidavits were made under oath and penalty of perjury and should be accepted as accurate and reliable statements.

Intellequick maintains a courier log with time and date entries for each pick-up and delivery in its normal course of business. As recorded in the courier log, the Express Mail was picked up from Quarles & Brady at 6:07 p.m. and deposited with the U.S. Post Office at 6:56 p.m. on April 11, 2005, see Exhibit E. The courier log is an independent and contemporaneous record, made within one business day of the deposit in question, that the Express Mail was in fact taken to the U.S. Post Office at the indicated time.

As further evidence that Express Mail EV667329735US was deposited with U.S. Postal Service on April 11, 2005, note that the U.S. Post Office records show Express Mail EV667329735US in its possession as of 5:05 p.m. on April 12, 2005, see Exhibit F. As recorded in the Intellequick courier log, the next Express Mail pick-up by Intellequick from the offices of Quarles & Brady did not occur until 6:08 p.m. on April 12, 2005. This following delivery was made to the U.S. Post Office at 6:58 p.m. on April 12, 2005. Therefore, the U.S. Post Office was indisputably in possession of the Express Mail EV667329735US before the delivery by Intellequick on April 12, 2005.

Based on the courier logs, which were made contemporaneous with the events in question and the time and date entries in the U.S. Post Office Express Mail tracking system, the Express Mail package was in fact deposited with employees of the U.S. Post Office on April 11, 2005. See also Express Mail Certificate executed on April 11, 2005, attached as Exhibit A, and sworn affidavits of Robert D. Atkins, Maritza O'Neill, William Bilyk and John Mitchell, attached as Exhibit D.

Based on reviewing the same information as explained above, the U.S. Post Office has confirmed and acknowledged in writing that “this mailing was dropped off at our Main Post Office on April 11, 2005, not April 12, as indicated on the Express Mail Label,” see attached Exhibit G.

On June 9, 2005, Applicants filed a first petition under 37 C.F.R. 1.10(d) requesting the filing date be corrected to April 11, 2005. On September 27, 2005, the USPTO dismissed the petition stating that Applicants had failed to provide corroborating evidence, see Exhibit H.

Applicants disagreed with the dismissal of the first petition and filed a second petition under 37 C.F.R. 1.10(d) on March 3, 2006, to further explain its position. The second petition was dismissed on June 21, 2006, for similar reasons as the first petition, see Exhibit I.

On October 19, 2005, the ‘159 application became abandoned.

In considering Applicants’ petitions, the USPTO to date has failed to consider the totality of the evidence. First of all, it is an absolute truism the Express Mail EV667329735US package containing the U.S. patent application as a nationalization of PCT patent application PCT/US2003/032887 was in fact deposited with the U.S. Post Office on April 11, 2005. Unfortunately, the date-in of the Express Mail is incorrect (which the U.S. Post Office has acknowledged). To demonstrate their position, Applicants have re-constructed the sequence of events which prove the April 11th filing date; see above discussion of the relevant facts.

Yet, in considering Applicants’ petitions, the USPTO has not considered or given proper weight to all of the evidence. The USPTO has not considered or even acknowledged the affidavits submitted with the petitions. The affidavits are sworn statements of the individuals who had direct knowledge of the matter in question and provide a complete chain of custody for the Express Mail package. Well-established jurisprudence demands that the affidavits be given appropriate evidentiary weight. It is improper to ignore these sworn statements. Based on the courier logs, in combination with the sworn affidavits, the line of reasoning is simple - the U.S. Post Office had possession of the Express Mail EV667329735US package before the April 12th

delivery by the courier. Therefore, the Express Mail EV667329735US package could not have been deposited with the U.S. Post Office on April 12th. It was deposited on April 11, 2005. The independent and objective evidence contained in the courier logs and the U.S. Post Office records, created within one business day of the deposit in question, confirm this fact.

The U.S. Post Office understood this reasoning and provided its official statement confirming the actual date of acceptance. Yet, the USPTO decisions have discounted the U.S. Post Office letter because it does not set forth the factual basis on which the conclusion is based. Rule 10(d)(3) requires to the satisfaction of the Commissioner corroboration by evidence from the U.S. Post Office. Applicants believe that the letter is such corroboration under Rule 10(b)(3). To discount the letter implies that an official from the U.S. Post Office is reaching conclusions and making statements on a whim, which is simply not the case. The fact that the evidence was presented to the U.S. Post Office by Applicants' law firm does not make the evidence defacto suspect or diminish its objective elements. Just like the USPTO, the U.S. Post Office had to be convinced of the facts. The courier logs and the U.S. Post Office records, in combination with Applicants' affidavits, present a clear and undisputable picture as to what happened. Again, the U.S. Post Office understood and accepted the evidence and acknowledged the mistake. For the USPTO to discount an official statement from the U.S. Post Office out-of-hand is improper.

Again, Applicants maintain that Applicants' sworn affidavits must be given appropriate evidentiary weight, which the USPTO has failed to do. For these reasons, Applicants are compelled to invoke the supervisory authority of the Director under 37 C.F.R. 1.181 to seek a proper resolution. The affidavits, in combination with U.S. Post Office records, clearly prove that the Express Mail EV667329735US package was deposited with U.S. Post Office on April 11th. The U.S. Post Office records confirm that it had possession of the Express Mail EV667329735US package before Applicants' delivery on April 12th. Once these facts are understood, the only possible conclusion is that the Express Mail EV667329735US package was indeed deposited with the U.S. Post Office on April 11, 2005.

USSN: 10/531,159
Keim *et al.*
Petition Under 37 C.F.R. § 1.181

This petition is being filed as promptly as the circumstances and gathering of information would allow. The present patent application is of high business importance to the assignee of record. For all of the foregoing reasons and based on the supporting documentation, Applicants respectfully request the Director to grant this petition to accord U.S. Patent Application No. 10/531,159 a filing date of April 11, 2005.

Applicants further request that the '159 patent application be withdrawn from abandonment and submitted for examination before the USPTO.

Respectfully submitted,
QUARLES & BRADY STREICH LANG LLP

August 21, 2006

By: Robert D. Atkins
Robert D. Atkins
Reg. No. 34,288

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Robert D. Atkins
Quarles & Brady Streich Lang LLP
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Two North Central Avenue
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Telephone: 602-229-5311
Facsimile: 602-229-5690
Email: rda@quarles.com

EXHIBIT A

EXPRESS MAIL CERTIFICATE: EV667329735US

I hereby certify that this correspondence listed below is being deposited with the United States Postal Service on the date set forth below as Express Mail in an envelope addressed to: Mail Stop PCT RO/US, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Signature
and Deposit: April 11, 2005

By:

(Signature of person depositing mail)

MARITZA O'NEILL

CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. 1.10

Applicant : Paul S. Keim *et al.*
Serial No. : To be assigned
Date of Filing : April 11, 2005
Title : *MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE
RESISTANCE IN BACILLUS ANTHRACIS*
Art Unit : To be assigned
Examiner : To be assigned
Docket No. : 112624.00029

Mail Stop: PCT RO/US
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Type of Filing:

- 1) Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (2 pages) (in duplicate)
- 2) Preliminary Amendment (3 pages)
- 3) Application Data Sheet (3 pages)
- 4) Executed Declaration (4 pages)
- 5) Executed Power of Attorney (4)
- 6) Assignments (4), plus Recordation Form Cover Sheet
- 7) Verification Statement (1)
- 8) Paper copy of Sequence Listing (28 pages)
- 9) Diskette with copy of Sequence Listing
- 10) Return postcard

TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A SUBMISSION UNDER 35 U.S.C. 371		ATTORNEY'S DOCKET NUMBER 112624.00029 U.S. APPLICATION NO. (If known, see 37 CFR 1.5) To be assigned
INTERNATIONAL APPLICATION NO. PCT/US2003/032887	INTERNATIONAL FILING DATE 14 October 2003	PRIORITY DATE CLAIMED 11 October 2002
TITLE OF INVENTION MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE RESISTANCE IN BACILLUS ANTHRACIS		
APPLICANT(S) FOR DO/EO/US Paul S. Keim, Talima Pearson, Lance Price, and Joseph D. Busch		
Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:		
1. <input checked="" type="checkbox"/> This is a FIRST submission of items concerning a submission under 35 U.S.C. 371. 2. <input type="checkbox"/> This is a SECOND or SUBSEQUENT submission of items concerning a submission under 35 U.S.C. 371. 3. <input checked="" type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. 371(f)). The submission must include items (5), (6), (9) and (21) indicated below. 4. <input checked="" type="checkbox"/> The US has been elected (Article 31). 5. <input checked="" type="checkbox"/> A copy of the International Application as filed (35 U.S.C. 371(c)(2)) a. <input type="checkbox"/> is attached hereto (required only if not communicated by the International Bureau). b. <input type="checkbox"/> has been communicated by the International Bureau. c. <input checked="" type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US). 6. <input type="checkbox"/> An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)). a. <input type="checkbox"/> is attached hereto. b. <input type="checkbox"/> has been previously submitted under 35 U.S.C. 154(d)(4). 7. <input checked="" type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3)) a. <input type="checkbox"/> are attached hereto (required only if not communicated by the International Bureau). b. <input type="checkbox"/> have been communicated by the International Bureau. c. <input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired. d. <input checked="" type="checkbox"/> have not been made and will not be made. 8. <input type="checkbox"/> An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)). 9. <input checked="" type="checkbox"/> An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)). 10. <input type="checkbox"/> An English language translation of the annexes of the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)). Items 11 to 20 below concern document(s) or information included: 11. <input type="checkbox"/> An Information Disclosure Statement under 37 CFR 1.97 and 1.98. 12. <input checked="" type="checkbox"/> An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included. 13. <input checked="" type="checkbox"/> A preliminary amendment. 14. <input checked="" type="checkbox"/> An Application Data Sheet under 37 CFR 1.76. 15. <input type="checkbox"/> A substitute specification. 16. <input checked="" type="checkbox"/> A power of attorney and/or change of address letter. 17. <input checked="" type="checkbox"/> A computer-readable form of the sequence listing in accordance with PCT Rule 13ter.2 and 37 CFR 1.821-1.825. 18. <input type="checkbox"/> A second copy of the published International Application under 35 U.S.C. 154(d)(4). 19. <input type="checkbox"/> A second copy of the English language translation of the international application under 35 U.S.C. 154(d)(4). 20. <input checked="" type="checkbox"/> Other items or information: Verification Statement and Return postcard.		

This collection of information is required by 37 CFR 1.414 and 1.491-1.492. The information is required to obtain or retain a benefit by the public, which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 15 minutes to complete, including gathering information, preparing, and submitting the completed form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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U.S. APPLICATION NO. (if known, see 37 CFR 1.5)		INTERNATIONAL APPLICATION NO.		ATTORNEY'S DOCKET NUMBER	
To be assigned		PCT/US2003/032887		112624.00029	
The following fees have been submitted				CALCULATIONS	PTO USE ONLY
21.	<input checked="" type="checkbox"/> Basic national fee.....	\$300		\$ 300.00	
22.	<input checked="" type="checkbox"/> Examination fee If International preliminary examination report prepared by USPTO and all claims satisfy provisions of PCT Article 33(1)-(4).....	\$100		\$ 200.00	
	All other situations.....	\$200			
23.	<input checked="" type="checkbox"/> Search fee Search fee (37 CFR 1.445(a)(2)) has been paid on the international application to the USPTO as an International Searching Authority.....	\$100		\$ 100.00	
	International Search Report prepared and provided to the Office.....	\$400			
	All other situations.....	\$500			
TOTAL OF 21, 22 and 23 =				\$ 600.00	
<input type="checkbox"/> Additional fee for specification and drawings filed in paper over 100 sheets (excluding sequence listing or computer program listing filed in an electronic medium). The fee is \$250 for each additional 50 sheets of paper or fraction thereof.					
Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof (round up to a whole number)	RATE		
- 100 =	/50 =		x \$250	\$ 0.00	
Surcharge of \$130.00 for furnishing the oath or declaration later than 30 months from the earliest claimed priority date (37 CFR 1.492(e)).				\$ 0.00	
CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE		
Total claims	22 - 20 =	2	x \$ 50	\$ 100.00	
Independent claims	3 - 3 =	0	x \$200	\$ 0.00	
MULTIPLE DEPENDENT CLAIM(S) (if applicable)			+ \$360	\$ 0.00	
TOTAL OF ABOVE CALCULATIONS =				\$ 700.00	
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Fees above are reduced by 1/2.				350.00	
SUBTOTAL =				\$ 350.00	
Processing fee of \$130.00 for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492(f)).				\$ 0.00	
TOTAL NATIONAL FEE =				\$ 350	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property				\$ 40.00	
TOTAL FEES ENCLOSED =				\$ 390.00	
				Amount to be refunded:	\$
				Amount to be charged:	\$ 390.00
<p>a. <input type="checkbox"/> A check in the amount of \$ _____ to cover the above fees is enclosed.</p> <p>b. <input checked="" type="checkbox"/> Please charge my Deposit Account No. <u>17-0055</u> in the amount of \$ <u>390.00</u> to cover the above fees. A duplicate copy of this sheet is enclosed.</p> <p>c. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. <u>17-0055</u>. A duplicate copy of this sheet is enclosed.</p> <p>d. <input type="checkbox"/> Fees are to be charged to a credit card. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</p>					
<p>NOTE: Where an appropriate time limit under 37 CFR 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the International Application to pending status.</p>					
<p>SEND ALL CORRESPONDENCE TO:</p> <p>Robert D. Atkins QUARLES & BRADY STREICH LANG LLP One Renaissance Square Two North Central Avenue Phoenix, AZ 85004</p>					
				SIGNATURE	
				Robert D. Atkins	
				NAME	
				34,288	
				REGISTRATION NUMBER	

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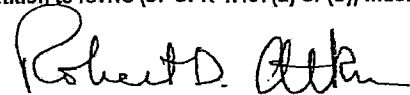
U.S. APPLICATION NO. (if known, see 37 CFR 1.5)		INTERNATIONAL APPLICATION NO. PCT/US2003/032887		ATTORNEY'S DOCKET NUMBER 112624.00029		
To be assigned						
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				 SIGNATURE Robert D. Atkins NAME 34,288 REGISTRATION NUMBER		

EXHIBIT B



EV 667329735 US



UNITED STATES POSTAL SERVICE®

Customer Copy
Label 11-F, April 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code 85034	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day	Postage \$ 17.85
Date Accepted 04/12/05	Scheduled Date of Delivery Month 4 Day 14	Return Receipt Fee \$
Mo. Day Year 04 12 05	Scheduled Time of Delivery <input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM	COD Fee \$
Time Accepted 1945 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Insurance Fee \$
Flat Rate <input type="checkbox"/> or Weight 11.7 lbs.	Int'l Alpha Country Code	Total Postage & Fees \$ 17.85
		Acceptance Emp. Initials e

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Mo. Day		
<input type="checkbox"/> WAIVER OF SIGNATURE/DELIVERY REQUIRED (Additional merchandise insurance and a waiver of signature is required. Each delivery to be made without obtaining signature of addressee or addressee's agent if delivery employee judges that article can be left in secure location and if addressee's signature constitutes valid proof of delivery.)		
NO DELIVERY <input type="checkbox"/> Forward <input type="checkbox"/> Hold		
Customer Signature		

CUSTOMER USE ONLY

METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or
Postal Service Acct. No.

FROM: (PLEASE PRINT)

PHONE ()

CHARLES & BRADY STREICH LANG
200 CENTRAL AVE FL 3
RENAISSANCE ONE
PHOENIX AZ 85004-4458

RATKINS 112624.00029

TO: (PLEASE PRINT)

PHONE ()

COMMISSIONER OF PATENTS
PO BOX 1450
ALEXANDRIA VA 22313-1450

MAIL STOP: PCT RO/US

FOR PICKUP OR TRACKING: Visit www.usps.com or Call 1-800-222-1811

EXHIBIT C

JC10 Rec'd PCT/PTO 12 APR 2005

10/531159

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

The following documents have been received:

EV667329735US - Certificate of Mailing; Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission under 35 U.S.C. 371 (2 pages); Preliminary Amendment (3 pages); Applicant Data Sheet (3 pages); Declaration (4 pages); Power of Attorney (4); Assignments (4), along with Recordation Form Cover Sheet; Verification Statement; Sequence Listing (28 pages); Diskette with copy of Sequence Listing; and return postcard.

Applicant : Keim, Paul S.; Pearson, Talima; Price, Lance B.; B

Serial No. : Pending

Patent No. : N/A

Title: Molecular Signatures and Assay for Fluoroquinolone Resistance in Bacillus Anthracis

Date: 4/11/2005

Our File: 112624.00029

Attorney: RATKINS

Secretary: MONEILL

QBSL IP Dept.

Received on 4/26/05

Docket for copy to MKE (18)

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE
RESISTANCE IN BACILLUS ANTHRACIS*

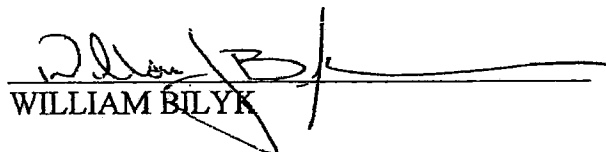
AFFIDAVIT OF WILLIAM BILYK

I, WILLIAM BILYK, hereby declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I have been employed by Intellequick Delivery, located in Phoenix, Arizona, for approximately 1-1/2 years.
4. I am currently assigned full-time to provide mail room services for Quarles & Brady Streich Lang LLP, Two North Central Avenue, Phoenix, Arizona.
5. I am responsible for processing and overseeing deliveries and pickups of all mail and other courier services for Quarles & Brady, including all Express Mail packages for delivery to the U.S. Post Office.
6. I was on duty performing my routine job functions on April 11 and April 12, 2005.
7. It is my practice to place all Express Mail package given to me in a designated bin which resides in my work area under my control and custody for pickup by an Intelliquick courier.
8. There is one scheduled mail pickup by an Intelliquick courier between 6:00 p.m. and 6:30 p.m. each business day.
9. On April 11, 2005, all Express Mail packages in my custody were picked up by John Mitchell between 6:00 p.m. and 6:30 p.m. Arizona time for delivery to the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026.
10. On April 12, 2005, all Express Mail packages in my custody were picked up by John Mitchell between 6:00 p.m. and 6:30 p.m. Arizona time for delivery to the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026.

11. Other than noted above, there were no pickups of Express Mail packages in my custody from the above business offices of Quarles & Brady for delivery to the U.S. Post Office on April 11 or April 12, 2005.

Signed under penalty of perjury this 23rd day of May, 2005.

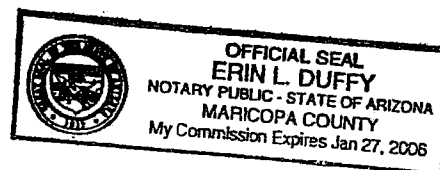

WILLIAM BILYK

STATE OF ARIZONA)
COUNTY OF MARICOPA)

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that WILLIAM BILYK, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of May, 2005.


Signature of Notary



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE
RESISTANCE IN BACILLUS ANTHRACIS*

AFFIDAVIT OF MARITZA O'NEILL

I, MARITZA O'NEILL, hereby and declare as follows:

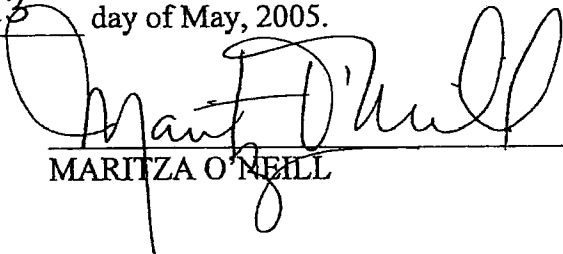
1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I am a Patent Assistant employed by Quarles & Brady Streich Lang LLP located at Two North Central Avenue in Phoenix, Arizona.
4. As part of my duties, I prepare and process documents required for filing patent applications with the U.S. Patent and Trademark Office (USPTO). I am responsible for preparing and processing all patent applications which are filed by Quarles & Brady from its Phoenix offices. It is my practice to file all patent applications with the USPTO using Express Mail.
5. On April 11, 2005, I received the above identified patent application from Robert Atkins, with his instructions to file the patent application with the USPTO on that same day. On April 11, 2005, I prepared transmittal documents required for filing the above patent application with the USPTO. One of the transmittal documents that I prepared was a Certification of Mailing under 37 C.F.R. 1.10. The Certificate of Mailing includes the statement that "I hereby certify that this correspondence listed below is being deposited with the United States Postal Service on the date set forth below as Express Mail in an envelope addressed to: Mail Stop PCT RO/US, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450". I signed the Certificate of Mailing on April 11, 2005 and placed the above patent application and transmittal documents, including the Certificate of Mailing in an Express Mail envelope having Express Mail Label No. EV667329735US, see attached Certificate of Mailing, dated April 11, 2005 and bearing my signature. The addressee on the Express Mail envelope was the USPTO.

6. On April 11, 2005, I personally sealed the Express Mail package containing the above patent application and transmittal documents, including the Certificate of Mailing dated April 11, 2005 and bearing my signature.

7. On April 11, 2005, before 4:30 p.m. Arizona time, I personally delivered the above Express Mail package containing the above patent application directly into the custody of William Bilyk of Intelliquick with instructions to deliver the Express Mail package to the U.S. Post Office on the same day.

8. Mr. Bilyk acknowledged receipt of the above Express Mail package and placed the Express Mail package in the bin designed for same day delivery to the U.S. Post Office.

Signed under penalty of perjury this 23 day of May, 2005.


MARITZA O'NEILL

STATE OF ARIZONA)
COUNTY OF MARICOPA)

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that MARITZA O'NEILL, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of MAY, 2005.

Erin Duffy
Signature of Notary



EXPRESS MAIL CERTIFICATE: EV667329735US

I hereby certify that this correspondence listed below is being deposited with the United States Postal Service on the date set forth below as Express Mail in an envelope addressed to: Mail Stop PCT RO/US, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Signature
and Deposit: April 11, 2005

By: 

(Signature of person depositing mail)

MARITZA O'NEILL

CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. 1.10

Applicant : Paul S. Keim *et al.*
Serial No. : To be assigned
Date of Filing : April 11, 2005
Title : *MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE
RESISTANCE IN BACILLUS ANTHRACIS*
Art Unit : To be assigned
Examiner : To be assigned
Docket No. : 112624.00029

Mail Stop: PCT RO/US
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Type of Filing:

- 1) Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (2 pages) (in duplicate)
- 2) Preliminary Amendment (3 pages)
- 3) Application Data Sheet (3 pages)
- 4) Executed Declaration (4 pages)
- 5) Executed Power of Attorney (4)
- 6) Assignments (4), plus Recordation Form Cover Sheet
- 7) Verification Statement (1)
- 8) Paper copy of Sequence Listing (28 pages)
- 9) Diskette with copy of Sequence Listing
- 10) Return postcard

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE
RESISTANCE IN BACILLUS ANTHRACIS*

AFFIDAVIT OF JOHN MITCHELL

I, JOHN MITCHELL, hereby certify and declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I have been an employee of Intellequick Delivery, located in Phoenix, Arizona, for approximately 1 year.
4. My duties include the pickup of all mail, including Express Mail packages, from various businesses each business day and deliver all such mail to the U.S. Post Office on the same business day.
5. My route includes the pickup of all mail, including Express Mail packages, from the business offices of Quarles & Brady Streich Lang LLP located at Two North Central Avenue, Phoenix, Arizona.
6. My scheduled pick up at the above business offices of Quarles & Brady occurs between 6 p.m. and 6:30 p.m. each business day.
7. It is my practice to maintain a daily manifest of all pickups and deliveries, including times and locations.
8. On April 11, 2005, I personally picked up all mail, including Express Mail packages from the designated bin maintained under the custody of William Bilyk, at the above business offices of Quarles & Brady at 6:07 p.m. Arizona time, as shown on the attached copy of my manifest for April 11, 2005.
9. On April 11, 2005, I personally delivered all mail, including Express Mail packages, which I had picked up from Quarles & Brady, directly to an employee of the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026. The delivery to the above U.S. Post

Office occurred at 6:56 p.m. Arizona time on that day, as shown on the attached copy of my manifest for April 11, 2005.

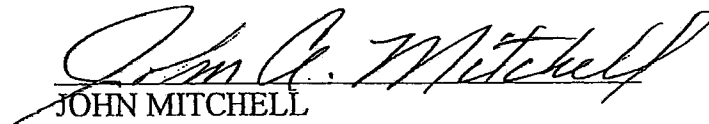
10. On April 12, 2005, I personally picked up all mail, including Express Mail packages from the designated bin maintained under the custody of William Bilyk, at the above business offices of Quarles & Brady at 6:08 p.m. Arizona time, as shown on the attached copy of my manifest for April 12, 2005.

11. On April 12, 2005, I personally delivered all mail, including Express Mail packages, which I had picked up from Quarles & Brady, directly to an employee of the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026. The delivery to the above U.S. Post Office occurred at 6:58 p.m. Arizona time on that day, as shown on the attached copy of my manifest for April 12, 2005.

12. The above noted entries in my manifest were made by my hand on April 11 and April 12, 2005.

13. On April 11 and April 12, 2005, except as noted above, I made no pickups of mail, including Express Mail packages, from the above business offices of Quarles & Brady.

Signed under penalty of perjury this 23rd day of May, 2005.


JOHN MITCHELL

STATE OF ARIZONA)
COUNTY OF MARICOPA)

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that JOHN MITCHELL, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of May, 2005.

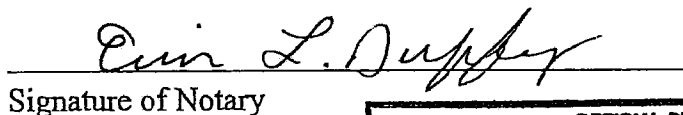

Signature of Notary



EXHIBIT E

INVOICE

602-322

Driver: J. MITCHELL IC#: 164054 Date: 11/11/05 Page 4 of

Reference #	Name - address - contact	Time of:	Pickup	Waiting:	Collect \$:	Rate:	Remarks:
1 30412541	P. D. M. V. E. D. 111111 3416 N. 24113	9:30	P	<input type="checkbox"/> On P/U			
Time due:	D. F. I. O. T. I. H. 111111	Delivery	D	<input type="checkbox"/> On Del			
13:17	2390 E. CHURCH 140	10:15					Print Last Name: GARCIA
2 30413017	P. E. C. O. N. T. R. A. T. 111111 41350 E. CHURCH 140	10:40	P	<input type="checkbox"/> On P/U			
Time due:	D. J. A. R. E. S. T. S. T. L.	Delivery	D	<input type="checkbox"/> On Del			
112:00	2 N. CNT 2200	11:17					Print Last Name: L. D. C. 2517
3 30412918	P. N. O. K. T. S. T. 111111 2390 E. CHURCH 140	10:18	P	<input type="checkbox"/> On P/U			
Time due:	D. S. T. R. I. K. T. T. L.	Delivery	D	<input type="checkbox"/> On Del			
11:44	2801 E. CHURCH 100	11:00					Print Last Name: LEONARD
4 30412913	P. A. Z. T. H. 111111 41350 E. CHURCH 140	10:39	P	<input type="checkbox"/> On P/U			
Time due:	D. A. Z. T. H. T. S. T.	Delivery	D	<input type="checkbox"/> On Del			
11:54	4041 N. CNT D100	10:55					Print Last Name: P. A. P. O. S. 2517
5 30410101	P. 11520	11:09	P	<input type="checkbox"/> On P/U			
Time due:	D. 394	Delivery	D	<input type="checkbox"/> On Del			
10:00		11:09					Print Last Name: D. C. A. W.
6 30413021	P. P. A. B.	11:20	P	<input type="checkbox"/> On P/U			
Time due:	D. K. A. N. D. I. J. U. S. T. C. T.	Delivery	D	<input type="checkbox"/> On Del			
12:15	5222 W. GLEN	12:19					Print Last Name: FILED
7 304130101	P. G. L. N. D. C. J. U. S. T. C. T.	12:47	P	<input type="checkbox"/> On P/U			
Time due:	D. G. A. B.	Delivery	D	<input type="checkbox"/> On Del			
16:15		4:15					Print Last Name: HERRERA BILYK
8 30413001	P. L. A. N. E. A. W. A. R. D. S.	11:35	P	<input type="checkbox"/> On P/U			
Time due:	D. C. L. E. A. R. I. M. A. G. E.	Delivery	D	<input type="checkbox"/> On Del			
14:47	5611 N. 54TH AVE	11:57					Print Last Name: SMITH
9 30410811	P. L. O. K. T. O. N. E. Q. U. I. P.	12:51	P	<input type="checkbox"/> On P/U			
Time due:	D. N. O. I. L. T. S. T.	Delivery	D	<input type="checkbox"/> On Del			
16:00		2:27					Print Last Name: MARK

INVOICE

DISPATCH

602-323-4000

Driver: J. MITCHELL IC#: 1041054 Date: 4/11/05 Page 1 of 1

Name - address - contact		Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
13041054	2025 N. 35TH ST. 260	11:59	D	<input type="checkbox"/> On Del	8.00	
Time due:	DRIVERS HENDRICK	Delivery	Rec'd by:	13.10		
13041054	3523 N. 35TH ST. 141	12:05	Print Last Name	Howe		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
23041054	1501 J. T AVE. 400	12:40	D	<input type="checkbox"/> On Del	7.52	
Time due:	D. NOR TST	Delivery	Rec'd by:	13.10		
13041054	2200	11:32	Print Last Name	ORDER		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
33041054	3550 N. CNT. 1800	12:19	D	<input type="checkbox"/> On Del	8.22	
Time due:	D. NOR TST	Delivery	Rec'd by:			
13041054	2200	2:27	Print Last Name	ORDER		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
43041054	316 E. FLOWER ST. 100	12:31	D	<input type="checkbox"/> On Del	6.09	
Time due:	D. NOR TST	Delivery	Rec'd by:	13.41		
13041054	1650		Print Last Name	ORDER		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
53041054	2398 E. CHALK 1ST FL 2:34	2:34	D	<input type="checkbox"/> On Del	8.12	
Time due:	D. NOR TST	Delivery	Rec'd by:	HEMPHILL		
13041054	333 E. VIRGINIA 12	13:08	Print Last Name	HEMPHILL		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
63041054	6001 N. 24TH ST. B	2:14	D	<input type="checkbox"/> On Del	11.92	
Time due:	D. NOR TST	Delivery	Rec'd by:	10.02		
13041054	1830 N. CATE 3FL	13:12	Print Last Name	W. S. Williams		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
73041054	2355 E. CHALK 400	4:00	D	<input type="checkbox"/> On Del	11.34	
Time due:	D. NOR TST	Delivery	Rec'd by:	15.37		
13041054	3801 N. CNT.	4:12	Print Last Name	HERRERA		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
83041054	2415 E. CHALK 100	3:53	D	<input type="checkbox"/> On Del	13.41	
Time due:	D. DIAMOND STEEL	Delivery	Rec'd by:	Jim RALPH		
13041054	212 325 AVE	3:03	Print Last Name	DAVE RALPH		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
93041054	2025 N. 35TH ST. 260	4:20	D	<input type="checkbox"/> On Del	10.54	
Time due:	D. SUPERIOR CHALK	Delivery	Rec'd by:			
13041054		4:54	Print Last Name	FILED & DEL		

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

INVOICE

DISPATCH

602-323-4000

Driver: J. MITCHELL IC#: 164054		Date: 4.11.05		Page 3 of	
Name - address - contact	Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference # 3044101 P SUPERIOR CT.	Pickup 5:07	P <input type="checkbox"/> On P/U			
Time due: 17:55 D G A B	Delivery 5:30	D <input type="checkbox"/> On Del		13.40	
		Rec'd by: BILLY K			
		Print Last Name BILLY K			
Reference # 2304176 P G A B	Pickup 4:40	P <input type="checkbox"/> On P/U			
Time due: 17:25 D SUPERIOR CT	Delivery 4:50	D <input type="checkbox"/> On Del		13.40	
		Rec'd by: FILED			
		Print Last Name FILED			
Reference # 3044637 P SUPERIOR CT.	Pickup 4:54	P <input type="checkbox"/> On P/U			
Time due: 12:00 D KNOX & VAN COTA	Delivery	D <input type="checkbox"/> On Del		6.85	
		Rec'd by:			
		Print Last Name			
Reference # 3044804 P G A B	Pickup 4:40	P <input type="checkbox"/> On P/U			
Time due: 17:40 D SUPERIOR COURT	Delivery 6:07	D <input type="checkbox"/> On Del		13.40	
		Rec'd by:			
		Print Last Name FILED			
Reference # 53044812 P G A B	Pickup 4:40	P <input type="checkbox"/> On P/U			
Time due: 18:50 D DISTRICT COURT	Delivery 6:05	D <input type="checkbox"/> On Del		9.24	
		Rec'd by:			
		Print Last Name FILED			
Reference # 63041210 P G A B	Pickup 6:07	P <input type="checkbox"/> On P/U			
Time due: 19:00 D USPO	Delivery 6:55	D <input type="checkbox"/> On Del		10.08	
		Rec'd by:			
		Print Last Name DELIVERED			
Reference # 73040947 P S A W	Pickup 6:15	P <input type="checkbox"/> On P/U			
Time due: 18:30 D FEDEX	Delivery	D <input type="checkbox"/> On Del		18.22	
		Rec'd by:			
		Print Last Name O FEDEX			
Reference # 83040947 P S A W	Pickup 4:15	P <input type="checkbox"/> On P/U			
Time due: 19:00 D USPO	Delivery 6:56	D <input type="checkbox"/> On Del		14.68	
		Rec'd by:			
		Print Last Name DELIVERED			
Reference # 93044862 P G A B	Pickup 6:07	P <input type="checkbox"/> On P/U			
Time due: 18:30 D UPS (AIRPORT)	Delivery 6:30	D <input type="checkbox"/> On Del		16.43	
		Rec'd by:			
		Print Last Name DELIVERED			

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

INVOICE

DISPATCH
602-323-4000

Driver: J. MITCHELL IC#: 164054 Date: 4-12-05 Page 1 of 1

Reference #	Name - address - contact	Time of:	Pickup	Waiting	Collect \$:	Rate:	Remarks:
1 3044651	P <u>WIPPER LN CT</u>	4:11:05	P <input type="checkbox"/> On P/U				
		4:40	D <input type="checkbox"/> On Del				
Time due:	D <u>WILLOW VALLEY</u>	10:11:00	Rec'd by:				
12:00			Print Last Name				
2 3045142	P <u>CORP ADRIAN</u>		P <input type="checkbox"/> On P/U				
	D <u>1310 W. WASH</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>	1:30	Rec'd by:				
14:00			Print Last Name				
3 3045145	P <u>WHITE ST L MINT</u>		P <input type="checkbox"/> On P/U				
	D <u>5:41</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>	1:30	Rec'd by:				
17:00			Print Last Name				
4 3045109	P <u>BK 1</u>		P <input type="checkbox"/> On P/U				
	D <u>5:41</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>		Rec'd by:				
10:00			Print Last Name				
5 3045092	P <u>5:41</u>		P <input type="checkbox"/> On P/U				
	D <u>BK 1</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>BK 1</u>		Rec'd by:				
9:30			Print Last Name				
6 3045111	P <u>SAUCE CT</u>		P <input type="checkbox"/> On P/U				
	D <u>5:41</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>		Rec'd by:				
10:00			Print Last Name				
7 3045114	P <u>1320 W. WASH</u>		P <input type="checkbox"/> On P/U				
	D <u>5:41</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>		Rec'd by:				
10:30			Print Last Name				
8 3045092	P <u>1320 W. WASH</u>		P <input type="checkbox"/> On P/U				
	D <u>5:41</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>		Rec'd by:				
10:30			Print Last Name				
9 3045115	P <u>113 PO</u>		P <input type="checkbox"/> On P/U				
	D <u>5:41</u>		D <input type="checkbox"/> On Del				
Time due:	D <u>5:41</u>		Rec'd by:				
9:35			Print Last Name				

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

INVOICE

DISPATCH
602-323-4000

Driver: J. MITCHELL IC#: 104054 Date: 4-12-95 Page 7 of 7

Name - address - contact		Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference #	P/BK 1	Pickup	P	<input type="checkbox"/> On P/U		
304534	1111 T	10:58	D	<input type="checkbox"/> On Del	6.72	
Time due:	D 38W	Delivery	Rec'd by:			
12:00		11:40	Print Last Name	HECKTOR		
Reference #	P/END AMIR	Pickup	P	<input type="checkbox"/> On P/U		
2904690	15011 CNT. 310	11:10	D	<input type="checkbox"/> On Del	11.94	
Time due:	D 125	Delivery	Rec'd by:	WOODS		
12:15	210 E. CARL DR.	11:20	Print Last Name	DECTWELLEN		
Reference #	P/125	Pickup	P	<input type="checkbox"/> On P/U		
304690	1111 T	11:20	D	<input type="checkbox"/> On Del	11.94	
Time due:	D/END AMIR	Delivery	Rec'd by:	R. Stoney		
14:10	#310	11:32	Print Last Name	WOODS		
Reference #	P/38W	Pickup	P	<input type="checkbox"/> On P/U		
304509		12:25	D	<input type="checkbox"/> On Del	7.31	
Time due:	D/BK 1	Delivery	Rec'd by:			
12:30		12:30	Print Last Name	DELIVERED		
Reference #	P/BK 1	Pickup	P	<input type="checkbox"/> On P/U		
504504			D	<input type="checkbox"/> On Del	7.31	
Time due:	D 38W	Delivery	Rec'd by:			
13:00		12:34	Print Last Name	O. P/41		
Reference #	P/SEC. OF ST.	Pickup	P	<input type="checkbox"/> On P/U		
304717		11:45	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 38W	Delivery	Rec'd by:			
13:09		12:07	Print Last Name	ISSUED		
Reference #	P/SEC. OF ST	Pickup	P	<input type="checkbox"/> On P/U		
304710		12:07	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 38W	Delivery	Rec'd by:			
15:10		12:25	Print Last Name	ISSUED		
Reference #	P/38W	Pickup	P	<input type="checkbox"/> On P/U		
804717		12:25	D	<input type="checkbox"/> On Del	7.29	
Time due:	D BARRY HARDIN MID	Delivery	Rec'd by:			
14:09	1331 N. 7 ST. 350	12:58	Print Last Name	THARFHEZ		
Reference #	P/LEGAL VIDEO SPEC.	Pickup	P	<input type="checkbox"/> On P/U		
904717	15011 CNT. 250	11:50	D	<input type="checkbox"/> On Del	7.29	
Time due:	D 38W	Delivery	Rec'd by:			
13:30		12:58	Print Last Name	BALYK		

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

INVOICE

DISPATCH
602-328-4000

Driver: J. MITCHELL IC#: 19 4654 Date: 10.12.05 Page 1 of 1

Name - address - contact		Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
1 3041101	P	11:00	D	<input type="checkbox"/> On Del	10.94	
Time due:	D	5:40	Rec'd by:	M. Dickschamps		
15:30		2:57	Print Last Name	M. Dickschamps		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
2 3041101	P	7:15	D	<input type="checkbox"/> On Del	10.94	
Time due:	D	11:00	Rec'd by:	LEC.		
13:07		7:45	Print Last Name	POSTED		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
3 3041101	P	2:47	D	<input type="checkbox"/> On Del	10.94	
Time due:	D	5:40	Rec'd by:			
14:08		2:54	Print Last Name	HECTOR		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
4 3041101	P	2:15	D	<input type="checkbox"/> On Del	10.94	
Time due:	D	5:40	Rec'd by:			
15:06		2:30	Print Last Name	DELIVERED		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
5 3041101	P		D	<input type="checkbox"/> On Del	7.31	
Time due:	D	5:40	Rec'd by:			
12:00		4:30	Print Last Name	O.P.U.		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
6 3041101	P		D	<input type="checkbox"/> On Del	7.31	
Time due:	D	5:40	Rec'd by:			
11:30		4:15	Print Last Name	O.P.U.		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
7 3041101	P	4:15	D	<input type="checkbox"/> On Del	10.94	
Time due:	D	5:40	Rec'd by:			
17:00		4:50	Print Last Name	RECORDED		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
8 3041101	P	4:30	D	<input type="checkbox"/> On Del		
Time due:	D	5:40	Rec'd by:			
18:00		5:30	Print Last Name	HECTOR		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
9 3041101	P	4:15	D	<input type="checkbox"/> On Del	10.94	
Time due:	D	5:40	Rec'd by:			
17:03		5:20	Print Last Name	FILED		

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

INVOICE

DISPATCH

602-323-4000

Driver: J MITCHELL IC#: 1611054

Date 4.12.05 Page 4 of 4

Reference #	Name - address - contact	Time of:	Waiting	Collect	Rate	Remarks
130418401	311 PRR 1012 CT	Pickup	P	<input type="checkbox"/> On P/U		
		5:20	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 57W	Delivery				
18:03		5:30				Print Last Name HECTOR
230418402	57W	Pickup	P	<input type="checkbox"/> On P/U		
		4:15	D	<input type="checkbox"/> On Del	11.40	
Time due:	D SEC OF ST	Delivery				
17:03		4:25				Print Last Name ISSUED
330418403	SEC OF ST	Pickup	P	<input type="checkbox"/> On P/U		
		4:25	D	<input type="checkbox"/> On Del	11.40	
Time due:	D 57W	Delivery				
18:04		5:30				Print Last Name HECTOR
430418404	57W	Pickup	P	<input type="checkbox"/> On P/U		
		20	D	<input type="checkbox"/> On Del	14.62	
Time due:	D 115PO	Delivery				
19:00		6:52				Print Last Name DEL.
530418405	57W	Pickup	P	<input type="checkbox"/> On P/U		
		6:20	D	<input type="checkbox"/> On Del	18.28	
Time due:	D FEDEX	Delivery				
18:30		6:40				Print Last Name DEL.
630418406	57B	Pickup	P	<input type="checkbox"/> On P/U		
		6:08	D	<input type="checkbox"/> On Del	10.08	
Time due:	D 115PO	Delivery				
19:00		6:58				Print Last Name DEL.
730418407	57W	Pickup	P	<input type="checkbox"/> On P/U		
		5:58	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 115PO	Delivery				
19:01		7:02				Print Last Name POSTED
830418408	115PO	Pickup	P	<input type="checkbox"/> On P/U		
		7:02	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 57W	Delivery				
10:00						Print Last Name
9		Pickup	P	<input type="checkbox"/> On P/U		
		D	<input type="checkbox"/> On Del			
Time due:	D	Delivery				Print Last Name

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

EXHIBIT F



Track & Confirm

Shipment Details

You entered EV66 7329 735U S

Your item was delivered at 10:41 am on April 14, 2005 in ALEXANDRIA, VA 22313 to PATENT OFFICE. The item was signed for by S DYAR.

Here is what happened earlier:

- ARRIVAL AT UNIT, April 14, 2005, 7:41 am, DULLES, VA 20102
- ENROUTE, April 13, 2005, 10:51 pm, DULLES, VA 20102
- ENROUTE, April 12, 2005, 6:54 pm, SCOTTSDALE, AZ 85255
- ACCEPTANCE, April 12, 2005, 5:05 pm, PHOENIX, AZ 85026

Notification Options

- ▶ Track & Confirm by email [What is this?](#) [Go >](#)
- ▶ Request Proof of Delivery [What is this?](#) [Go >](#)



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Preserving the Trust

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Track & Confirm

Enter label number:

RA

[Track & Confirm FAQs](#)

[Go >](#)

EXHIBIT G



May 27, 2005

Robert Atkins
Quarles and Brady Streich Lang
2 North Central Ave
Phoenix, Arizona 85004-4458

Dear Mr. Atkins:

After further review of your express mail piece number EV667329735US I have determined that this mailing was dropped off at our Main Post Office on April 11, 2005 not April 12, 2005 as indicated by the Express Mail Label. This mail piece had a next day delivery service standard and should have reached its destination in Alexandria Virginia on April 12, 2005. I apologize for the delay. If you have any further questions please do not hesitate to contact me at 602-225-3993.

Sincerely,

A handwritten signature in cursive script that reads "Melanie Thomas".

Melanie Thomas
Customer Relations Coordinator (acting)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-

FAX

EXHIBIT H



27 SEP 2005
UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Robert D. Atkins
Quarles & Brady Streich Lang LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004

In re Application of
Keim et al.
Serial No. : 10/531,159
PCT No.: PCT/US03/32887
Int. Filing Date: 11 October 2003
Priority Date: 11 October 2002
Attorney's Docket No.: 112624.00029
For: MOLECULAR SIGNATURE AND ASSAY FOR
FLUOROQUINOLINE RESISTANCE IN *BACILLUS*
ANTHRACIS

:
:
: DECISION ON
:
: PETITION UNDER
:
: 37 CFR 1.10(d)
:
:
:

This decision is in response to the "PETITION TO CORRECT A FILING DATE PRUSUANT TO 37 C.F.R. § 1.10(d)" filed 09 June 2005, requesting the Office to correct the national stage filing date.

BACKGROUND

On 11 October 2003, applicants filed international application PCT/US03/32887 that claimed priority of an earlier U.S. provisional application filed 11 October 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 02 December 2004. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 11 April 2005.

On 12 April 2005, applicants filed a letter for entry into the national stage in the United States which was accompanied by, *inter alia*, a declaration and the basic national fee of \$300. These papers were assigned U.S. Serial No. 10/531,159.

On 09 June 2005, applicants filed the current petition requesting that the above-identified application be accorded a national stage filing date of 11 April 2005.

DISCUSSION

37 CFR 1.10(d) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1) and (2).

✓ With respect to item (3), the Express Mail Label and the tracking information on the United States Postal Service website both indicate that the package was accepted on 12 April 2005. In order to refute this as the date of mailing, applicant has filed affidavits of Robert D. Atkins, William Bilyk, Maritza O'Neill and John Mitchell, along with a letter from Melanie Thomas of the United States Postal Service. Mr. Atkins states that he gave the package to Maritza O'Neill for filing with the USPTO. Ms. O'Neill states that she personally gave the package to Mr. Bilyk with instructions to mail the package the same day. She also states that Mr. Bilyk acknowledged receipt on that day, and placed the package in a bin designed for same day delivery to the United States Postal Service. Mr. Bilyk states that all packages were picked up by Mr. Mitchell on both the 11 April 2005 and the 12 April 2005 for delivery to the post office. Mr. Mitchell states that he picked up packages on both days and delivered the packages to the post office. Ms. Thomas states that upon further review, she had determined that the package was dropped off on 11 April 2005, and not the 12 April 2005.

Petitioner has not provided sufficient evidence from the USPS, as required under the rule. Specifically, Ms. Thomas fails to set forth the factual basis upon which her conclusion is based. If her conclusion was based on evidence provided to her by the law firm, then such would not constitute independent corroborating evidence.

Therefore, the application is abandoned.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.


A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by (1) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) a proper reply unless it has been previously submitted, and (3) the petition fee required by law for revival of an unintentionally abandoned application (1.17(m)). In this instance, the fee required by law for revival of an unintentionally abandoned application is \$1500. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

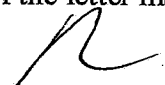
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of a grantable petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the entire delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a grantable petition for revival under 37 CFR 1.137(b).

CONCLUSION

Applicant's petition to correct the national stage filing date to 12 April 2005 is hereby **DISMISSED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


Debra S. Brittingham
PCT Special Programs Examiner
Office of PCT Legal Administration


Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: (571) 272-3280
Facsimile: (571) 273-0459

EXHIBIT I

21 JUN 2006



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Robert D Atkins
quarles & Brady Streich Lang
One Renaissance Square
Two North Central Avenue
Phoenix AZ 85004

In re Application of :
KEIM et al. : DECISION
Application No.: 10/531,159 :
PCT No.: PCT/US03/32887 :
Int. Filing Date: 14 October 2003 :
Priority Date: 11 October 2002 :
Attorney's Docket No.: 112624.00029 :
For: MOLECULAR SIGNATURE AND ASSAY :
FOR FLUOROQUINOLINE RESISTANCE IN :
BACILLUS ANTHRACIS :

This decision is in response to applicants' renewed petition under 37 CFR 1.10(d) filed on 03 March 2006.

BACKGROUND

On 14 October 2003, applicants filed international application PCT/US03/32887, which designated the U.S. and claimed a priority date of 11 October 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 02 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 11 April 2005 (29 January 2005 being a Saturday).

On 12 April 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 June 2005, applicants filed a petition under 37 CFR 1.10(d) requesting that the papers filed in the submission for entry into the national stage be accorded a date of 11 April 2005 rather than 12 April 2005.

On 27 September 2005, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS

112624.00029

QBSL IP Dept.

Received on

Docket for

6-26-06
CC: MKE (8)

provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 19 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America as per the decision mailed 27 September 2005.

On 03 March 2006, applicants filed the instant renewed petition under 37 CFR 1.10(d).

DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 12 April 2005. The "Express Mail" label number EV667329735US is shown on the Transmittal Letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Customer Copy of Express Mail mailing label #EV535680024US shows a "Date In" of "041205".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 27 September 2005, a satisfactory showing has been made under 37 CFR 1.10(d)(1) and (2).

As to item (3), applicants still have not provided a satisfactory showing. 37 CFR 1.10(d)(3) requires any showing "be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the

‘Express Mail Post Office to Addressee’ service of the USPS.” As to this type of evidence, applicants have provided a letter from the USPS and a courier log from the courier who picked up the package at the law firm and delivered it to the USPS. Regarding the letter, as noted in the decision mailed 27 September 2005, the letter fails to set forth the factual basis on which the conclusion was based and that if her conclusion was based on evidence provided to her by the law firm, then it would not constitute independent corroborating evidence.

As to the courier log, it appears to be intended to satisfy what MPEP § 513 indicates is an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). The relevant portion of MPEP § 513 states:

... a notation in a log book, entered after deposit by the person who deposited the correspondence as “Express Mail” within one business day of such deposit, setting forth *the items indicated above*, would be deemed on petition to be an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). (emphasis added)

The “items indicated above” are

... a log book which contains information such as the “Express Mail” number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor’s initials or signature; and the date and time of entry in the log.

The document provided by applicant includes the date and time of deposit. However, it does not appear to include any of the other information. In particular, it does not include the “Express Mail” mail number, any file identification number, or the date and time of entry in the log. Without the “Express Mail” mail number and file identification number, it is not clear how one is to reliably identify the package at issue. Without the date and time of entry in the log, it is not clear if the log came into being within one business day after deposit.

CONCLUSION

For the reasons set forth above, applicant’s renewed petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled “Renewed Petition Under 37 CFR 1.10(d).” No additional petition fee is required.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer

Legal Examiner

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Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301

Facsimile: (571) 273-0459